

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**MIKE FORADORI, AS GUARDIAN  
FOR THE PERSON AND ESTATE OF  
MICHAEL FORADORI, JR., A MINOR,  
LANE FURNITURE INDUSTRIES, INC.**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 1:03CV669-MD**

**CAPTAIN D'S, LLC, AND  
AND**

**DEFENDANT/THIRD PARTY  
PLAINTIFF/CROSS-PLAINTIFF**

**JIM WALTER HOMES, INC.**

**DEFENDANT/CROSS-DEFENDANT**

**VS.**

**CASTLE & ASSOCIATES, P.A., ET AL**

**THIRD PARTY DEFENDANTS**

**MOTION FOR SUMMARY JUDGMENT AS TO ALL CLAIMS ASSERTED BY  
PLAINTIFF LANE FURNITURE INDUSTRIES, INC.**

COMES NOW Defendant Captain D's, LLC (hereinafter "Captain D's"), by and through counsel and, pursuant to Rule 56 of the Federal Rules of Civil Procedure, files its Motion for Summary Judgment as to all claims asserted by Lane Furniture Industries, Inc. ("Lane"). In support of its Motion, Captain D's would show unto the Court as follows:

**I.**

On July 20, 2004, Captain D's filed a Motion to Join Necessary and/or Indispensable Parties and for Leave to File Third Party Complaint seeking, among other things, to join Lane, pursuant to Federal Rule of Civil Procedure 17(a), as a real party in interest due to its subrogation lien for medical payments made on behalf of Plaintiff under an ERISA benefit plan. See Exhibit A, Motion to Join Necessary and/or Indispensable Parties and for Leave to File Third Party Complaint. On September 23, 2004, this Court entered an Order granting said Motion, and

on November 19, 2004, Lane was joined as a Plaintiff in this lawsuit. See Exhibit B, Order; and Exhibit C, Joinder in Action. However, since joining in this lawsuit as a Plaintiff, Lane has submitted no pre-discovery disclosures, nor has it produced any documents or identified any witnesses, to establish or to support its claimed lien amount. Due to Lane's failure to support its lien with any evidence in this cause, summary judgment dismissing Lane's purported lien is required.

## II.

Federal Rule of Civil Procedure 56 states in relevant part that "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law". F.R.C.P. 56(c). In the instant case, no genuine issues of material fact exist in this cause in regard to the claims asserted by Lane and, accordingly, summary judgment in favor of Captain D's as to all claims asserted against it in this cause is appropriate.

## III.

In support of this Motion for Summary Judgment, Captain D's would rely on its Memorandum Brief and the following exhibits:

- A. Motion to Join Necessary and/or Indispensable Parties and for Leave to File Third Party Complaint;
- B. Order (granting Motion to Join Necessary and/or Indispensable Parties and for Leave to File Third Party Complaint); and
- C. Joinder in Action.

WHEREFORE, PREMISES CONSIDERED, Defendant Captain D's, LLC, respectfully requests the Court to dismiss, with prejudice, all claims asserted by Plaintiff Lane Furniture Industries, Inc. in this cause, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

RESPECTFULLY SUBMITTED, this the 19th day of July 2005.

CAPTAIN D'S, LLC, Defendant

BY: s/L. Bradley Dillard  
L. BRADLEY DILLARD (MB #10114)  
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**CERTIFICATE OF SERVICE**

I, L. Bradley Dillard, one of the attorneys for Defendant Captain D's, LLC, do hereby certify that I have this day served a true and correct copy of the above and foregoing Motion for Summary Judgment as to all claims asserted by Plaintiff Lane Furniture Industries, Inc. of Defendant Captain D's, LLC on the following counsel via electronic filing only:

R.H. Burress, III  
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**and** on the following counsel of record by placing said copy in the United States Mail, postage prepaid, addressed to him at his usual post office address as follows:

James Mark Shelton  
SHELTON & DAWSON, P.A.  
P.O. Box 228  
Tupelo, MS 38802

THIS the 19<sup>th</sup> day of July, 2005.

s/L. Bradley Dillard  
L. BRADLEY DILLARD